

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

OA NO.2108/1995

with OA NO.1806/1996

NEW DELHI, THIS 17 DAY OF OCTOBER, 1997.

OA NO.2108/1995

1. N. VENUDHAR REDDY
682 Sector 7, Pushp Vihar
New Delhi-17.
2. Satyendra Prakash
B-3 Akash Bharti Apartments
Patpat Ganj, Delhi-92.
3. NAYANK KUMAR AGRAWAL
C-1/35 Janakpuri,
New Delhi.
4. P. VENKATESWAR RAO
91-A Prateek Market
Munirka, New Delhi.
5. K. SYAMA PRASAD
208 B, Pocket A
Mayur Vihar-II
Delhi-92.
6. HEMENDRA KAINTHOLA
15 Prem Nagar Market
Near Lodhi Colony
New Delhi
7. NITIN WAKANKAR
J-5, Akash Bhati Apartments
24, IP Extension
Patpatganj, New Delhi-92.
8. VASUDHA GUPTA
F.445, Vikaspuri
New Delhi-18.

...APPLICANTS



(By Advocate - Shri Ashok Aggarwal)

1. UNION OF INDIA,
through its Secretary
Ministry of Information & Broadcasting
Shastri Bhawan
New Delhi.

contd..2/-

2.
DEPARTMENT OF PERSONNEL & TRAINING
through its Secretary,
M/o Personnel, Public Grievances & Pensions
South Block
Central Secretariat
New Delhi

...RESPONDENTS

(By Advocate - Shri M.K.Gupta)

24
OA NO.1806/1996

SHRI AKASH LAXMAN
BB-2A, DDA Flats
Munirka, New Delhi.

...APPLICANT

(By Advocate - Shri A.K. Behera)

VERSUS

1. UNION OF INDIA,
through its Secretary
Ministry of Information & Broadcasting
Shastri Bhawan
New Delhi.
2. DEPARTMENT OF PERSONNEL & TRAINING
through its Secretary,
M/o Personnel, Public Grievances & Pensions
South Block
Central Secretariat
New Delhi
3. S.C. SETIA
News Editor, Doordarshan
Akashwani Bhawan, New Delhi.
4. SHRI R.B. VISHWAKARMA
News Editor
News Services Division
All India Radio Broadcasting House
New Delhi.
5. SHRI A.K. SINHA
News Editor
All India Radio
New Delhi
6. Shri M.R.S. MENON
News Editor
All India radio
New Delhi
7. SHRI D. SATPATHY
Information Officer
Press Information Bureau
1st Floor, Shastri Bhawan
New Delhi

De
(By Advocate - Shri M.K.Gupta)

contd..3/-

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8. SHRI SUMAN SHARMA
News Editor,
News Services Division
All India Radio
New Delhi

9. SHRI M.K. SANTHANAM
Senior Correspondent
All India Radio
New Delhi

10. SHRI RAJINDER ROY
Campaign Officer
DAVP, M/o Information & Broadcasting
3rd Floor, PTI Building
Sansad Marg
New Delhi.

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...RESPONDENTS

(Respondent No.10 in person)

(None for other respondents)

ORDER

R.K. AHOOJA, MEMBER (A)

Both these OAs relating to a dispute of inter se seniority between direct recruits (DRs for short) and promotees in the Indian Information Service (IIS for short) are being disposed of by this common order as the main issues involved in both the O.A.s are same. For the sake of facility, O.A. No.1806/1996 (Akash Laxman Vs. UOI) is being taken up first.

OA NO.1806/96

The facts giving rise to the present round of litigation may be briefly stated. The precursor of the IIS was the Central Information Service (CIS for short) which was set up in 1959 with the promulgation of the CIS Rules 1959. After the initial constitution, the method for the maintenance of the service prescribed in Rule 4 stipulated that there will be Grade IV, III, II, I, Junior

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Administrative Grade (JAG for short), Senior

Administrative Grade (SAG for short) and Selection Grade.

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The basic grade IV was to be manned entirely through direct recruitment via UPSC examination. Grade III was to be manned by promotion on selection basis failing which by direct recruitment. In Grade II, however, 50% of the vacancies were to be filled by way of open competitive examination and the remaining 50% by promotion from Grade III officers. Since the main controversy is regarding inter se seniority in Grade II, it is not necessary to describe further the modes of recruitment for higher grades. As per Rule 6(a), qualifying service for promotion from Grade III to Grade II was at that time prescribed as three years in Grade III. It is submitted on both sides that Rule 6 in so far as it related to filling the vacancies in Grade I and II, that is, 50% by promotion and 50% by direct recruitment, could not be followed in the years from 1974 to 1980, as during this period there was no direct recruitment. In 1982, the CIS (Amendment) Rules 1982 were promulgated adding provisos 2 and 3 to Rule 6(c)(ii)(1). The new provisos 2 and 3 read together stated that direct recruitment to Grade II would remain suspended from 1.1.1974 to 31.12.1980 and that promotees regularly appointed to Grade II between these dates would rank en bloc senior to the first direct recruit after 31.12.1980. The new Rule 6(c)(ii)(2) further prescribed that 50% of the permanent vacancies of Grade II will be filled by substantive appointment of temporary Grade II officers on the basis of seniority-cum-fitness. After this amendment, rule 6(c)(ii)(2) would read as follows:-

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Before Amendment

After Amendment

Rule 6 (c)(ii)(1) :-

Recruitment:-

(Grade II)

(1) 50% of the vacancies in this grade shall be filled through an open competitive examination to be held by the Commission in the manner prescribed in Schedule VII.

2. Provided that direct recruitment to Grade II shall remain suspended from the 1st January, 1974 to 31st December, 1980.

Provided further that persons regularly appointed to this Grade by promotion during the period from the 1st January 1974 to 31st December 1980 shall be en bloc senior to the first direct recruit to this Grade appointed to this Grade after the 31st December, 1980.

(2) 50% of the vacancies shall be filled by selection, from amongst officers holding duty posts in Grade III or any higher grade, on the basis of the recommendations of a Departmental Promotion Committee.

(2) 50 per cent of the permanent vacancies shall be filled by substantive appointment of temporary Grade II officers in the order of their seniority subject to the rejection of the unfit.

(3) Temporary vacancies in Grade II shall be filled by selection from amongst officers holding duty posts in Grade III.

2. A number of orders of promotion were issued by the respondent Ministry from 21.8.1981. The first order dated 21.8.1981 appointed 102 Grade III officers to Grade II on an officiating basis specifying that they will be placed en bloc below Shri H.C. Shukla. By a subsequent order dated 18th September, 1981, their appointment was dated to take effect from 7th July 1981 instead of the dates they actually assumed charge. Two of the officers, S/Shri K.L. Wadhwa and S.K. Nayyar, came before this Tribunal in T-1123/85 and OA No.1204/1987 and obtained orders that their ad hoc officiation should be counted

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towards their seniority in the grades held by them at the time. Both the decisions were however set aside by the Hon'ble Supreme Court in appeal.

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3. Thereafter, on 7.6.1985, the respondent Ministry promoted 92 officiating Grade III officials to the CIS Grade II w.e.f. 26.4.1985. They were however regularised in Grade II only after 1988, but on the basis of their continued officiation were granted seniority from 26.4.1985. The first grievance of the applicant is that in respect of all vacancies filled in after 31.12.1980, the DRs and promotees had to be adjusted on 50:50 basis, that is, on one-to-one ratio, between the DRs and promotees, on that basis determining their inter se seniority.

4. By notification dated 18.2.1987, the Government established the Indian Information Service and promulgated the IIS (Group 'A') Service Rules 1987. Rule 3 of the said rules provided that IIS (Group A) would include all persons appointed under Rule 6 and 7 of the earlier rules. Rule 6 dealt with the initial constitution and stated that all officers of CIS holding posts on a regular basis would be members of the IIS in their respective grades. Rule 7 dealt with future maintenance, and sub-rule (2) thereof provided that 50% of the vacancies in the junior grade of Group A would be filled by DRs and remaining 50% by selection on the basis of merit in the order of seniority from the feeder grade. The permanent and temporary appointees at the initial constitution stage, as per sub-rule 2 of Rule 9, were to rank senior to permanent and temporary appointees respectively who are appointed later. Subsequent to the setting up of the IIS, the ministry

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promoted 22 officiating Grade III officers of CIS to IIS w.e.f. 25.2.1987. They were granted seniority from the same date. Further promotion took place of 68 Group B officers to Group A on ad hoc basis w.e.f. 17.9.1990. (29) They were also granted seniority from the same date. The whole issue thus revolves around the appointment of these four batches of promotees, that is, 102 appointed vide orders dated 21.8.1981 (A-3), 92 appointed on 7.6.1985 (A-8A), 22 w.e.f. 25.2.1987 vide order dated 4.3.87 (A-9) and 68 appointed w.e.f. 17.9.1990 (A-10 and 11). Their seniority vis-a-vis the applicant in the present O.A. is reflected in the seniority list issued on 9.3.1993 and 4.1.1996. In short, the applicant's case is that as per the CIS rules, after 31.12.1980 the posts had to be filled on one to one basis between promotees and DRs and therefore inter se seniority of the promotees had to be determined in accordance with their place in the quota-rota system and not on the basis of their ad hoc officiation even when it was uninterrupted and ultimately resulted in regular appointment.

5. The respondent Ministry in their reply have taken two preliminary objections. One is that the applicant has impugned the 1993 seniority list in 1996 and therefore the O.A. is time barred. They also say that the 1996 seniority list is a draft seniority and therefore the present O.A. is premature. The second objection is that there is non-joinder of necessary parties, in as much as the promotee officers who are likely to be affected if the directions sought for by the applicant are granted, have not been impleaded. We are in entire agreement with the ld. counsel for the applicant that the preliminary

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objections are not valid. In so far as the first objection is concerned, the respondents cannot say in one breath that it is too late and also too early. As far as the second objection is concerned, as held by the Supreme Court in DIWAKAR SRIVASTAVA & ORS. VS. STATE OF MADHYA PRADESH & ORS. 1984 (Suppl.) SCC 214 where a general question is involved and a large number of persons are concerned, a few of such persons impleaded in representative capacity are sufficient for the purpose of due compliance of procedure. In the present case, respondents No.3 to 10 are such persons. The general question involved is regarding the rules governing the inter se seniority of DRs and promotee officers in the IIS. Thus, in terms of the ratio of the aforesaid judgement of the Supreme Court, the objection regarding non-joinder of necessary parties is unsustainable.

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6. On merits, the respondents say that due to various reasons, no direct recruitment to the CIS could be made for the years 1974 to 1980 and all the posts during this period were filled up on ad hoc basis by promotion. One Shri S.C. Kakatwana, an officer who was so promoted on ad hoc basis filed a Civil Writ Petition before the Delhi High Court praying that the ad hoc service rendered in Grade II be counted towards his seniority. His writ was transferred to the Tribunal as T 1250/1985. In its judgement dated 6th march, 1987, the Tribunal allowed the petition holding that the ad hoc officiation of the petitioner in various grades followed by regular appointment to that grade cannot be taken to be either irregular or fortuitous since there was no reversion and it was followed by regular appointment to that grade. The

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Tribunal also directed the respondents to revise the seniority of the petitioner taking into account his entire period of continuous ad hoc officiation. An SLP was filed against the order of the Tribunal. Since no stay was granted by the Supreme Court, the directions of the Tribunal have been implemented subject, of course, to the outcome of the SLP. Following Shri Kakatwana, officers similarly placed belonging to Grade IV and III of CIS also filed applications before the Tribunal seeking the extension of the same principle. The Tribunal allowed O.A. No.1204/1987 S.K. NAYYAR VS. UOI and K.L. WADHWA VS. UOI (TA No.1183/85) vide its orders dated 20.11.1987 and 6.3.87 respectively. Again SLPs were filed by the UOI and the Supreme Court reversed the decision of the Tribunal holding that the past ad hoc service cannot be taken into account in computing inter se seniority since the officers remained out of the cadre until their regularisation. Since, however, the judgement of this Tribunal in Kakatwana case has not been stayed or reversed by the Supreme Court, the inter se seniority of promotees has been determined on the principle laid down therein. The respondents say that unless and until the Tribunal's judgement in Kakatwana is reversed or disturbed, the benefits granted to the promoted officers in terms of the said judgement cannot be withdrawn.

7. One Shri Rajinder Roy, a promotee officer of the IIS, also sought impleadment as an affected party. His request was granted and he was impleaded as respondent No.10. He has also filed a counter affidavit. The plea taken by him is that in so far as appointees before 1.1.1981 are concerned, they are to be placed en bloc above the DRs. Those appointed after 1.1.1981

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are to be in the ratio of 1:1 DRs and departmental promotee officers. However, the Ministry has not followed this principle and more direct recruits have been brought in than the promotees. Thus, he states that between 1981 and 1990 vacancies notified to the UPSC for direct recruitment for Grade II of CIS were ⁱⁿ total 251 while the promotions made to Grade II are only 195. On the number of promotees, he alleges that the Ministry failed to hold annual DPCs as required by the rules and in six years, that is, 1982, 1983, 1984, 1986, 1988 and 1989, no DPC was held with the result that the vacancies of earlier years were bunched together. Thus, not only the Ministry was remiss in holding the DPCs for promotion from 1970 onwards, even after 1980 neither DPCs were held on regular basis nor the promotion quota was taken up to the full extent. He therefore contends that Grade II seniority list of 1993 and 4.1.1996 be quashed, but not on the contentions raised by the applicant but instead in order to fully observe the quota system based on annual DPCs for promotees.

8. We have heard the ld. counsel for the parties as well as Shri Rajinder Roy at length. In short, the contention of the ld. counsel for the applicant is that after 1.1.1981, direct recruitment having been resumed, the rules required the filling up of the vacancies on 50:50 basis between direct recruits and promotees. The respondents, according to the applicant, have not taken any ground that the quota-rota system had failed necessitating the appointment of promotees against direct recruitment vacancies. Consequently, any excess appointment of the promotees has to be treated as in

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contravention of the statutory rules. Any ad hoc officiation by such promotees outside the statutory rules has to be disregarded till such time that the promotees find their slot in the promotion quota and their seniority fixed accordingly. The ld. counsel cited the case of SYED KHALID RIZVI & ORS. VS. UOI & ORS. JT 1992 (Suppl.) SC 169 in which it was held in respect of promotees to the IPS that seniority will be counted only from the date on which the officer was brought into the select list by the selection committee in accordance with the Recruitment rules. The ld. counsel argued that since the appointments of the promotees were not in accordance with RRs, their seniority could not be based on their continued officiation. Further they could not also get the benefit of long officiation in terms of KESHAV CHANDRA JOSHI & ORS. VS. UOI & ORS. AIR 1991 SC 284 case, as they had ^{not a} been continued for 15-20 years, which will raise the presumption that the RRs had been relaxed in their favour.

It was also strenuously argued on behalf of the applicant that the Kakatwana judgement is not applicable in respect of the post-1981 promotees for two reasons; firstly it related to the seniority of promotees between 1974 and 1980 about whom there was no dispute and whose seniority was not being questioned by the applicant; and secondly the Supreme Court had reversed the judgement of the Tribunal in S.K. Nayyar and K.L. Wadhwa cases (supra) which were based on Kakatwana case. Shri M.K. Gupta, ld. counsel for the respondents, on the other hand pointed out that the Supreme Court neither stayed nor reversed the orders of the Tribunal in respect of Kakatwana case. The SLP was in fact filed by the respondents before the

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(34) Supreme Court. In view of this position, the respondents have no alternative but to follow the principle laid down in Kakatwana case for fixation of seniority of the promotees. He pointed out that the seniority finalised by the 1996 seniority list was subject to the outcome of the SLP in Kakatwana case. The ld. counsel also produced a copy of the order passed by the Hyderabad Bench of the Tribunal in OA No.428/1994 in which the challenge to the 1993 and 1996 seniority lists which are also impugned here, has been negated. He submitted that in view of this decision of a coordinate bench, the present O.A. was also liable to be dismissed.

9. We have given careful consideration to the above contentions. The first point to be noted is that the promotees even before their promotion were part of the service, viz., CIS and now IIS. The direct recruits like the applicant on the other hand became part of the service only after their recruitment. The first batch of grade III officers had been appointed on officiating basis to Grade II w.e.f. 7.7.1981, even before the promulgation of the CIS Amendment Rules 1982 and also the appointment of the first direct recruit after 31.12.1980. Their appointment to the service and the seniority is being challenged by the applicant by this O.A. filed on 21.8.1996. We do not consider that at this stage we are called upon to determine the right of these 102 officers on the basis of the long officiation. Suffice it to say that in our opinion, their cases do appear, since their appointment was prior to the notification of the amendment and the induction of the first direct recruit after 31.12.1980, to be on the same footing as the persons promoted between 1974 and 1980. Hence, the ratio of

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Kakatwana case would also apply in respect of these promotees. We do not agree with the ld. counsel for the applicant that in view of the judgements of the Supreme Court in the cases of S.K. Nayyar and K.L. Wadhwa, the ratio of Kakatwana case is no longer applicable here. The orders of the Supreme Court are decisions taken in the facts and circumstances of each case. Even though reliance was placed on Kakatwana case in S.K. Nayyar and K.L. Wadhwa, the circumstances of the parties differed in the later two cases from the Kakatwana case and therefore unless the Kakatwana judgement is reversed by the Supreme Court, the ratio of that case will also apply to the afore mentioned promotees appointed to Grade II w.e.f. 7.7.1981.

10. We also do not find sufficient grounds for interference in regard to the seniority accorded to the promotees after 1982 as well. The applicant has made a general claim that the promotees could not find a place in their own quota of the year for which seniority has been given to them. The ld. counsel for the applicant stressed that the number of promotees to be adjusted in Grade II has to be in relation to the actual number of vacancies of direct recruits notified by the respondents to UPSC. We consider that there can be no dispute on this point. We have on one hand the statement of Shri Rajinder Roy that the number of promotions made in the ten years between 1980 and 1990 are less than the number of vacancies notified by the respondents to UPSC in the ratio of 195 to 259, which meant that the promotions were actually short by 64. The ld. counsel has also drawn our attention to the DOP&T instructions which provide for carry over of the shortfall in either the direct recruitment quota or

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promotee quota to the next year and the manner of fixation of inter se seniority of DRs and promotees where the failure of one source leads to excess of the other in a particular recruitment year. However, the applicant has not produced any particulars to show that the impugned seniority list of 1996 is not in accordance with the quota system and DOP&T instructions in respect of shortfalls. It has been alleged in the connected case that when a representation was made, the respondents with a view to mislead the applicant published a revised seniority list of IIS group A with a number of DRs of 1987, without reference to the seniority of promotees from S.No.602 onwards in the 1993 seniority list. The ld. counsel for the applicant stressed that if it had been a continuing seniority list in replacement of the whole of 1993 list, then the aforesaid batch of promotees from S.No.602 to 698 of 1993 list would have gone below the 1987 DRs on the basis of amended RRs of 1982.

11. As we have mentioned earlier, we would have accorded greater credence to this allegation if the applicants in either of the two O.A.s had been able to show as to how the promotees did not fall in their quota instead of making the general allegation that they are not being placed correctly. In view of this position, when we are faced with contradictory statements, by the official respondents as well as Respondent No.10, we do not find ourselves able to intervene in the matter.

12. We are also obliged to take note of the fact as pointed out by Shri Gupta, that a coordinate bench at Hyderabad has rejected the challenge to the seniority list

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of 1993 and 1996. The ld. counsel of the applicant has pointed out that the matter before the Hyderabad Bench was a challenge by the promotees who wanted their seniority to be assigned on the basis of yearwise panel up to 31.12.1980, while the present challenge is by DRs. We note however that though the challenge in OA No.428/94 at Hyderabad was by promotees, the relief sought for by the promotees was that after 31.12.1980 inter se seniority vis-a-vis DRs should be on the basis of year of recruitment/ promotion. In other words, the promotees there wanted that the inter se seniority should be in the ratio of 1:1 between DRs and promotees. The Hyderabad Bench in its order have held as follows:-

"We are not persuaded to accept the version of the applicant with regard to the vacancy position in Grade A posts in the service. We have no reason to disbelieve the statistical data of the vacancy position given by the respondents in their reply."

12. The Hyderabad Bench has further held that the seniority list prepared by the respondents is in accordance with the principles enunciated in Kakatwana case and in the cases of A.K. Bhatnagar and V.K. Arora & Ors., and that the applicants in that case can have no grievance over the seniority list prepared and finalised on 9.3.1993. We do not agree with the contention of the ld. counsel for the applicant that the failure of a challenge by the promotees does not mean that the DRs cannot question the same seniority list from a different angle. The point is that the coordinate Bench has upheld

the validity of the impugned seniority list on the basis that it was in accordance with the Kakatwana judgement. Here, the challenge is that the Kakatwana judgement is not applicable. We consider that the decision of the coordinate Bench is relevant to the issue before us since we also are of the opinion that till the Kakatwana judgement is reversed by the Supreme Court, it has to hold. We have to follow the decision of the coordinate Bench.

13. In the light of the above discussion, the O.A. is dismissed. No costs.

OA No.2108/1995

14. In this, the applicants No.1 to 4 belong to the 1988 batch of IIS and applicants No.5 to 8 to the 1989 batch. They say that the first seniority list of IIS after they joined service was issued in 1993 and included the names of officers in Grade II of the service up to 31.12.1988. Their names were however not included on the plea that as the 1989 batch had not even completed their probation, they were not substantive members of the service. Their grievance is that on the other hand, a large number of Grade II officers were included in the list even though they were working on ad hoc basis and some of them were later even reverted to Grade III. The respondents also published a list of officers in Grade I of the service on 8.4.1993 wherein also all the applicants had been ignored. They point out that many of the persons who should be their juniors in Grade II have been promoted to Grade I. Under the rules of the service, the seniors, even when they had not rendered the qualifying service, are entitled to consideration for promotion when their

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juniors are considered. On that basis, they claim that their names should also have been in the Grade I list. The applicants impugn the seniority accorded to a large number of promotees as being in contravention of Rule 7 of the IIS which provides for 50% direct recruitment and 50% promotion to Grade II (now junior scale of Grade A). They allege that if the promotees had been assigned their due place in accordance with their due quota, most of them would have been placed junior to them and in case these juniors have been considered for Grade I, then the applicants are equally entitled to the same.

15. The respondents have taken the same plea against the maintainability of their seniority list of 1993 as in O.A. No.1806/1996 above. For the reasons mentioned above, we do not consider that the plea of the applicants can be considered at least until the Supreme Court gives its decision in the SLP filed by the respondents against the Kakatwana judgement. Here also, the applicants have not shown as to how the promotions have been made in excess of the quota system. Further, we have the decision of the Hyderabad Bench in which the challenge to the list prepared in 1993 and 1996 has been rejected. Needless to add that in case the seniority list of Grade II (now junior scale) of Grade A service of IIS stands, then the seniority list of grade I (now senior scale) of Grade A service ~~therefore~~ cannot be challenged.

15. For the reasons mentioned above, this O.A. also fails and is accordingly dismissed. No costs.

Attested
1/8/10/97
21/10/97

(R.K. AHOOJA)
MEMBER (A)

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)